

ELECTION WITH TRAVERSE

The Examiner required restriction under 35 U.S.C. §§121 and 372 as follows:

Group I: Claim 12-16 drawn to a method for applying a reclosable pouring element; and

Group II: Claims 17-25, drawn to a container with a reclosable pouring element.

The Examiner has required that Applicants elect the method for applying a reclosable pouring element of Group I or the container with a reclosable pouring element of Group II.

Applicants respectfully traverse this Restriction Requirement. The present application is generally directed to a container with a reclosable pouring element. The Examiner contends that the inventions listed in Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. Specifically, the Examiner alleges that the inventions of Groups I and II do not relate to a single inventive concept because the technical features of Group I are not required for Group II.

The Applicants respectfully disagree. Unity of invention requires that the claims all include technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art (PCT Rule 13.2, 37 C.F.R. § 1.475(a)). In this invention, the Group I claims 12-16 drawn to a method for applying a reclosable pouring element comprising a pouring opening, a flange, a closure film and a removable cap to a container having an opening, wherein the container comprises a body, a base and a lid, comprising the steps of connecting the pouring element to the body, connecting the lid to the body, connecting the base to the body, sterilizing the interior of the container, and filling the container and closing the container would necessarily involve a search on a container with a reclosable pouring element comprising a pouring opening, a flange, a closure film and a removable cap, which is the subject matter of Group II claims 17-25. Therefore, it is apparent that all of the claims include at least the special technical features of a container with a reclosable pouring element.

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Moreover, since all of the claims include common subject matter relating to a container with a reclosable pouring element, searches directed to the claims of either Group would clearly overlap each other. Such co-extensive searching would not present any undue burden on the Examiner for examination of the claims. Furthermore, the Examiner handling the international application (PCT/EP2003/007338) believed unity of invention to exist and conducted a search on a similar set of claims. Accordingly, restriction of the claims between the allegedly distinct inventions embodied by these two species is inappropriate.

In view of the above remarks, withdrawal of the restriction requirement and examination of claims 12-25 on the merits are respectfully requested.

However, in the event the Examiner maintains the Restriction Requirement, Applicants hereby elect, with traverse, to prosecute the invention of Group I which includes Claims 12-16. Applicants reserve their right to file at a later time a divisional application directed to the non-elected claims.

Respectfully submitted,
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